Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenants: MNSD, MNDCT, FFT
For the landlords: MNDL-S, FFL

Introduction

This was a cross application hearing that dealt with the tenants' application pursuant to the Residential Tenancy Act (the Act) for:

- a monetary order for compensation for damage and loss under the Act, the Regulation or tenancy agreement, pursuant to section 67;
- an order for the landlord to return the security deposit (the deposit), pursuant to section 38; and
- an authorization to recover the filing fee for this application, under section 72.

This hearing also dealt with the landlords' application pursuant to the Act for:

- an authorization to retain the tenants' deposit under Section 38 of the Act;
- a monetary order for compensation for damage and loss under the Act, the Regulation or tenancy agreement, pursuant to section 67 of the Act; and
- an authorization to recover the filing fee for this application, under to section 72.

This hearing was originally convened on October 13 and adjourned to November 23, 2020. This decision should be read in conjunction with the interim decision arising out of the October 13 hearing.

Both parties attended both hearings. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

Issues to be Decided

Are the tenants entitled to:

1. an order for the landlords to return double the deposit?
2. a monetary award for compensation for damages?
3. an authorization to recover the filing fee for this application?

Are the landlords entitled to:

1. a monetary award for compensation for damages?
2. an authorization to retain the tenants' deposit?
3. an authorization to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is their obligation to present the evidence to substantiate their applications.

Both parties agreed the tenancy started on August 01, 2017 and ended on July 31, 2018. Monthly rent was $1,250.00, due on the first day of the month. At the outset of the tenancy the landlords collected a security deposit of $625.00. The landlords still hold the deposit in trust. A copy of the tenancy agreement was submitted into evidence.

Both parties also agreed the tenants served their forwarding address in writing on July 17, 2018. A copy of the email with the forwarding address was submitted into evidence. The tenants applied for dispute resolution on June 22, 2020 and the landlords applied on August 24, 2020.

The landlord stated the tenants verbally authorized them to retain the deposit and issued a written authorization. The undated document signed by both tenants states:

> As you have not responded to our formal request we are retracting the previous request for rent and damage deposit, and will be consulting with a lawyer on any further steps taken in this situation. The previous request was made under false pretences, as we were told by you that there was no mould contamination anywhere but the bedroom.

The tenant stated there was no authorization for the landlords to withhold the deposit.

The tenant affirmed he only noticed mould in the rental unit on July 08, 2018, on the corner of the bedroom wall. The tenant inspected the rental unit and noticed mould underneath the china cabinet, bed mattress and box spring, couch and recliner. The tenant contacted the landlord immediately.

The text message dated July 08, 2018 states:

> L: So the mold guy had a few questions, **What was the date you first noticed the mold and where?**
> T: **The first time was when we were at the hospital coming home on September 29th and [anonymized] infant car seat was covered in mold. It had been sitting in the corner where the change table is now but I thought it was just something stranger that happened. [anonymized] backpack and luggage full of jackets molded at the same time in the closet in the living room but I thought it was a coincidence.** Then the weather cooled down and we didn't have a problem. **This year would be the first few wicker baskets that have become molded in the last two or three months.** In the living room, the bedroom, and in front of the laundry. […]
> But the wall mold is definitely a new thing, I move my furniture around a lot and I always clean the base boards. **So my mattress would've molded when the wall did. As for [anonymized] mattress it was clean a month ago**, my mom was in town like she is every month to see him and I pulled it out to wipe it down with vinegar because I thought it smelled weird. But now I realize it was the carpet. **I don't remember the exact dated but that's kind of when and where everything started showing up.**
> **L: So this has been going on since last September? Just wondering why you didn't mention to us earlier?** We like to solve things that happen down there almost immediately.
> **T: We didn't think it was a moisture problem at the time, we assumed it was something that became contaminated while moving. And then it stopped completely in the colder months.** The dryer issue was also brought up but never fixed…just ignored when the 2 separate maintenance guys couldn't do anything about it. […]
>
> (emphasis added)

The landlord affirmed the tenants were aware there was mould in the rental unit since September 2017 and only notified them about this issue on July 08, 2018. If the tenants had notified the landlords earlier they would have taken immediate steps to remove the mould. The mould only grew because of the tenants' negligence. The tenant stated he thought the mould on the infant car seat mentioned in the text message was not related to the rental unit.

The tenant hired a mould specialist to inspect the rental unit. The mould inspector summarized his findings in an email dated September 16, 2020:

> According to [tenant] he first noted what appeared to be fungal growth on the baby's car seat in September 2017. Following this discovery [tenant] also began to notice visible fungal growth on personal items.

The tenant affirmed that as a consequence of the mould contamination he had to purchase new furniture items: bed mattress, air bed and crib air mattress, rug, recliner and china cabinet. As the tenants had to move out immediately and they only had an alternative living arrangement in a distant city, they needed to move their remaining belongings to a storage unit, and then to their new unit.

The tenants are claiming compensation for their moving expenses, two nights in a hotel and travelling expenses, and for the mould inspection they hired. The tenants are seeking a total compensation in the amount of $12,548.00. A monetary order worksheet was submitted into evidence.

The landlords affirmed they repaired the rental unit in August 2018 to remove the mould. A receipt for $2,900.00 paid on August 20, 2018 was submitted into evidence. The drywall and floors had to be repaired after the mould removal. A receipt for $1,548.75 paid on September 25, 2018 was submitted into evidence.

The landlord affirmed the dryer was repaired on September 06, 2017. A receipt was submitted into evidence. The tenant affirmed the dryer was 12 years-old when the tenancy started and they did not cause damages to the dryer after it was repaired. The landlord affirmed the tenants damaged the dryer during the tenancy. A new dryer was purchased on August 12, 2018 (a receipt was submitted into evidence).

The landlord affirmed the tenants did not remove their furniture items from the rental unit and only the mattress was contaminated with mould. The landlord paid $952.65 to remove the tenants' furniture. A receipt dated August 02, 2018 was submitted into evidence. The tenant affirmed all the furniture items left were contaminated and could not be removed.

The landlord affirmed the rental unit was clean when the tenancy started. The kitchen, bathroom, fridge and counter were not clean when the tenancy ended. The landlord paid $125.00 for a cleaner. The rental unit has around 1,100 square feet. Photographs taken on July 31, 2018 were submitted into evidence.

The landlord affirmed the front door lock was in perfect conditions when the tenancy started and the tenants damaged it. A new locker was installed at a cost of $52.98. A photograph showing a broken door lock was submitted into evidence. The tenant agreed the lock was damaged during the tenancy.

The landlords are seeking for compensation in the total amount of $5,475.98 for mould repair, a new dryer, removal of furniture, cleaning and the door lock replacement.

Analysis

Section 7 of the Act states:

> Liability for not complying with this Act or a tenancy agreement
> 7 (1)If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
> (2)A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

> The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:
>
> - a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
> - loss or damage has resulted from this non-compliance;
> - the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
> - the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Tenants' claim for the return of the deposit

Section 38 of the Act requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

Both parties agreed the forwarding address was provided on July 17, 2018 and the landlords only brought an application for dispute resolution on August 24, 2020.

Based on the tenants' coherent testimony and the undated document signed by the tenants, I find the undated document is not an authorization for the landlords to withhold the deposit.

Pursuant to section 38(6)(b) of the Act the landlord must pay the tenants equivalent to double the value of the deposit for failure to return the tenant's deposit within 15 days of receiving her forwarding address:

> 38 Return of security deposit and pet damage deposit
> (1)Except as provided in subsection (3) or (4) (a), within 15 days after the later of
> (a)the date the tenancy ends, and
> (b)the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following:
> (c)repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
> (d)make an application for dispute resolution claiming against the security deposit or pet damage deposit.
> […]
> (4)A landlord may retain an amount from a security deposit or a pet damage deposit if,
> (a)at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or
> (b)after the end of the tenancy, the director orders that the landlord may retain the amount.

Residential Tenancy Branch Policy Guideline 17 states:

> Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:
> • if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;

Under these circumstances and in accordance with sections 38(6)(b), I find that the tenants are entitled to a monetary award of $1,250.00. Over the period of this tenancy, no interest is payable on the landlords' retention of the deposit.

Tenants' claim for compensation for damages

Both parties agreed the rental unit had mould contamination. I note that in order to arbitrate the tenants' claim for compensation for mould related damages, it is not relevant to determine the reasons why the mould started, but if the tenants failed to timely notify the landlords about this issue.

The parties offered conflicting testimony regarding when the tenants first noticed mould in the rental unit.

The text message dated July 08, 2018 indicated the tenants first were aware of mould in September 2017, one month after the tenancy started. The tenants stated they noticed mould not only on the infant's car seat, but also on the tenants' backpack stored in the living room closet. The same text message also states the "first few baskets have become molded in the last two or three months."

The email dated September 16, 2020 states the tenants noticed "visible fungal growth on personal items" by September 2017.

Based on the landlords' testimony, the text message dated July 08, 2018 and the email dated September 16, 2020, I find the tenants noticed mould as early as September 2017, noticed it again in April or May 2018 and one more time in June 2018. The tenants first notified the landlord about this issue on July 08, 2018.

Residential Tenancy Branch Policy Guideline 05 explains the duty of the party claiming compensation to mitigate their loss:

> B. REASONABLE EFFORTS TO MINIMIZE LOSSES
> **A person who suffers damage or loss because their landlord or tenant did not comply with the Act, regulations or tenancy agreement must make reasonable efforts to minimize the damage or loss. Usually this duty starts when the person knows that damage or loss is occurring. The purpose is to ensure the wrongdoer is not held liable for damage or loss that could have reasonably been avoided. In general, a reasonable effort to minimize loss means taking practical and common-sense steps to prevent or minimize avoidable damage or loss**. For

example, if a tenant discovers their possessions are being damaged due to a leaking roof, some reasonable steps may be to:
• remove and dry the possessions as soon as possible;
• promptly report the damage and leak to the landlord and request repairs to avoid further damage;
• file an application for dispute resolution if the landlord fails to carry out the repairs and further damage or loss occurs or is likely to occur.
Compensation will not be awarded for damage or loss that could have been reasonably avoided.
Partial mitigation
Partial mitigation may occur when a person takes some, but not all reasonable steps to minimize the damage or loss. If in the above example the tenant reported the leak, the landlord failed to make the repairs and the tenant did not apply for dispute resolution soon after and more damage occurred, this could constitute partial mitigation. In such a case, an arbitrator may award a claim for some, but not all damage or loss that occurred.

(emphasis added)

As the tenants first notified the landlords about mould on July 08, 2018, I find the tenants failed to mitigate their damages. I find, on a balance of probabilities, if the tenants had notified the landlords earlier, the landlords could have taken action to avoid damages caused by mould.

Section 32(3) of the Act states: "A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant."

Thus, I find the tenants failed to comply with section 32(3) of the Act and the damages suffered by the tenants are a consequence of their neglect about the mould. As such, I dismiss the tenants' claim for compensation.

Landlords' claim for mould repairs (items 1 and 2 of the landlords' monetary worksheet)

As stated in this decision topic "Tenants' claim for compensation for damages", the tenants failed to comply with the Act by not notifying the landlords about the mould as soon as they were aware of it.

Based on both parties testimony and the receipts submitted by the landlords, I am satisfied, on a balance of probabilities, the tenants' negligence is responsible for the

mould repair damages suffered by the landlords. I am also satisfied the landlords acted as soon as possible to repair the damages.

As such, I award the landlords $2,900.00 for mould repairs and $1,548.75 for the subsequent drywall and floor repair services. Thus, I grant the landlords $4,448.75.

Landlords' claim for dryer (item 3)

The parties offered conflicting testimony about the condition of the dryer when the tenancy ended. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

I find the receipt for a new dryer does not prove the old dryer was not functioning when the tenancy ended. I find the landlords did not prove, on a balance of probabilities, the tenants damaged the dryer during the tenancy and it had to be repaired at the end of the tenancy.

As such, I dismiss the landlords' application for compensation for the dryer.

Landlords' claim for removal of furniture (item 4)

Based on both parties testimony and the receipt for removal of furniture, I find the landlords incurred an expense in the amount of $952.65 for the removal of the tenants' furniture.

I find the tenants' failure to mitigate their losses by not notifying the landlords immediately about the mould in the rental unit is the reason why the tenants' furniture was contaminated with mould.

I find that the expense the landlords incurred of $952.65 to remove the remaining tenants' furniture from the 1,100 square feet rental unit is not reasonable. I am not satisfied why it cost them this amount to remove the tenants' furniture. Thus, I award the landlords $400.00 for this loss, as this is a reasonable amount to compensate the landlord for his loss.

Landlords' claim for cleaning (item 5)

Section 37(2) of the Act states:

> Leaving the rental unit at the end of a tenancy
> 37(2) When a tenant vacates a rental unit, the tenant must
> (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear

Residential Tenancy Branch Policy Guideline 1 states:

> The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises)2 , or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy Act.

Based on the coherent landlords' testimony and detailed photographs taken on July 31, 2018, I find the rental unit was clean when the tenancy started, the tenants did not leave the rental unit reasonably clean when the tenancy ended and the landlords were required to undertake extensive cleaning at the end of the tenancy. I find the landlords incurred a loss of $125.00 for cleaning the rental unit.

As such, I award the landlords $125.00 in compensation for this loss.

Landlords' claim for front door lock (item 6)

Based on both parties testimony, I find the tenants damaged the front door lock and the landlords incurred a loss of $52.98 to replace it.

As such, I award the landlords the amount of $52.98 for this loss.

Filing fee and Set-off

As both parties were at least partially successful with their applications, each party will bear their own filing fee.

The tenants are awarded $1,250.00. The landlords are awarded $5,026.73.

Residential Tenancy Branch Policy Guideline 17 sets guidance for a set-off when there are two monetary awards:

> 1. Where a landlord applies for a monetary order and a tenant applies for a monetary order and both matters are heard together, and where the parties are the same in both

applications, the arbitrator will set-off the awards and make a single order for the balance owing to one of the parties. The arbitrator will issue one written decision indicating the amount(s) awarded separately to each party on each claim, and then will indicate the amount of set-off which will appear in the order.

2. The Residential Tenancy Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord and the monetary amount or cost awarded to a tenant may be deducted from any rent due to the landlord.

In summary:

Award for the tenants	$1,250.00
Award for the landlords	$5,026.73
Final award for the landlords	**$3,776.73**

Conclusion

Pursuant to section 67 of the Act, I grant the landlords a monetary order in the amount of **$3,776.73**

The landlords are provided with this order in the above terms and the tenants must be served with this order as soon as possible. Should the tenants fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Residential Tenancy Act.

Dated: December 11, 2020

Residential Tenancy Branch